IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 23RD FEBRUARY 2007 / 4TH PHALGUNA 1928

Crl.MC.No. 483 of 2007()

CC.13/1999 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, TRIVANDRUM

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PETITIONER: APPELLANT/ACCUSED

NIZAR.A, THEJUS THEATRE,
VELLAYANI JUNCTION, NEMOM,
MEMOM P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE

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1. MOHAMMED ALI NOON BHAVA,
T.C.16/546, JAGATHY,
THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, OFFICE OF THE
ADVOCATE GENERAL, ERNAKULAM.

BY ADV. SRI.BRIJESH MOHAN
PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.483 of 2007

Dated this the 23rd day of February 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in an offence punishable under Section 138 of the Negotiable Instruments Act by order dated 10/10/2006 in Crl.R.P.No.3479 of 2006. The verdict of guilty and conviction were upheld but the sentence was modified and reduced. The petitioner was sentenced to undergo imprisonment till rising of court. He was further directed "to pay" an amount of Rs.3,80,000/- as compensation. In default of payment of compensation, he was sentenced to undergo S.I for a period of three months.

2. The petitioner has now come to this court to report to the court that the matter has been settled between the parties and that an amount of Rs.3,80,000/- has been paid to the respondent/complainant. In as much as payment has been effected as per order by this court in the revision, there can be no question of default sentence being executed against him, submits the learned counsel for the petitioner. The petitioner apprehends that when he appears before the learned Magistrate

to serve the substantive sentence of imprisonment till rising of court, he may be compelled to undergo the default sentence by the learned Magistrate in as much as the compensation has not been deposited in court. It is, in these circumstances, prayed that directions may be issued under Section 482 Cr.P.C.

3. I find merit in the prayer of the learned counsel for the petitioner. If actually the direction "to pay" the amount of Rs.3,80,000/- has been complied with and the petitioner/accused and the complainant/respondent appear before the learned Magistrate and satisfy with the learned Magistrate that such payment has been made, there can be no question of default sentence being executed as there is no default and the direction for payment has been complied with.

4. This Criminal Miscellaneous Case is, in these circumstances, allowed. It is clarified that if the complainant and the petitioner do satisfy with the learned Magistrate that the compensation amount has been paid to the complainant and received by him, the learned Magistrate shall not proceed to execute the default sentence.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006